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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/631,179	08/02/2000	Michael J. McMahon	769-236 Div.	1111

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EXAMINER

SIPOS, JOHN

ART UNIT PAPER NUMBER

3721

DATE MAILED: 05/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/631,179

Applicant(s)

MCMAHON ET AL. 

Examiner

John Sipos

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-33 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 6-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 9-33 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 6) ☐ Other: _____

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Due to the amendment of claim 6 to include the limitation that the bags are "concatenated", i.e. connected, claims 7 and 8 have been incorporated into the elected specie group of claim 6 (see restriction made in Paper No.3).

DOUBLE PATENTING REJECTION

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 6-8 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application No. 09/915,100. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only differences are that the claims of the '100 application claims do not recite the insertion of the slider onto the zippers after filling the bags with a product. It would have been obvious to one skilled in the art to apply the sliders of the claim 6 process of the '100 application after the filling step since the timing of the slider application, i.e. before or after the filling step, would have been merely a matter of obvious design consideration since it doesn't solve any stated problem and the process would perform equally well regardless of the sequence of these steps.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

Claims 6-8 are rejected under 35 U.S.C. ' 103 as being unpatentable over the patent to Herz (3,790,992). The patent to Herz shows a package forming process in which sliders are applied to connected bags that comprise a continuous zipper fastener (see column 3, line 51 et seq.). The process does not discuss the timing of the filling operation. It would have been obvious to one skilled in the art to apply the sliders of Herz after the filling of the bags since the timing of the slider application, i.e. before or after the filling step, would have been merely a matter of obvious design consideration since it doesn't solve any stated problem and the process would perform equally well regardless of the sequence of these steps.

Claim 6-8 are rejected under 35 U.S.C. ' 103 as being unpatentable over the patent to Lems (4,654,878) in view of Thieman or Laguerre. The patents to Lems shows a packaging operation, which comprise of providing a series of connected packages having a recloseable zipper and feeding the packages to a filling and sealing station. The Lems operation lacks the use of sliders. The patents to Thieman and Laguerre disclose the methods of providing a folded film web having recloseable zippers, providing a supply of sliders, removing a slider from the supply and inserting it on to the zipper. It would have been obvious to one skilled in the art to provide sliders to the zipper of Lems as shown by Thieman or Laguerre to provide a bag opening aid for the consumer. It would have been obvious to one skilled in the art to apply the sliders to the bags of Lems after the filling step since the timing of the slider application, i.e. before or after the

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filling step, would have been merely a matter of obvious design consideration since it doesn't solve any stated problem and the process would perform equally well regardless of the sequence of these steps.

ADDITIONAL REFERENCES CITED

The following prior art is made of record but has not been relied upon in the rejection of claims. However, the prior art is considered pertinent to applicant's disclosure.

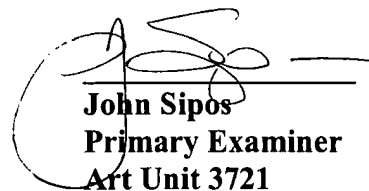
The patent to Laguerre (3426396) shows the applying of sliders to zipper closures mounted on connected bags and Sanborn (4240241) shows connected packages with zipper closures.

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 872-9302**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at (703) 308-2187.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.


John Sipos
Primary Examiner
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